

R.D. # 0021-99
Hoboken, NJ

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22

**FRANCISCAN HEALTH SYSTEM
OF NEW JERSEY, INC.¹**

Employer

and

CASE 22-RC-11810

**LOCAL 225, UNITED SECURITY
GUARDS OF AMERICA**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,² the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

¹ The name of the Employer appears as amended at the hearing.

² A brief filed by the Employer has been fully considered. No other briefs were filed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.³
3. The labor organization involved claims to represent certain employees of the Employer.⁴
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act :

All full-time and regular part-time security officers employed by the Employer at its St. Mary's Hospital Hoboken, New Jersey and St. Francis Hospital Jersey City, New Jersey facilities, excluding all office clerical employees, supervisors, including security supervisors, as defined in the Act, and all other employees.⁵

The Employer declined to stipulate that the Petitioner is a labor organization under the Act, asserting that it is not an organization in which employees participate. The record reveals and it is undisputed that the Petitioner was formed in or about July

³ The Employer is a New Jersey corporation engaged in the operation of acute care hospitals which provide health care services at its Hoboken and Jersey City, New Jersey facilities, its only facilities involved herein.

⁴ The status of the Petitioner as a labor organization within the meaning of the Act will be discussed *infra*.

⁵ The unit description is in accord with the agreement of the parties which I find to be appropriate for purposes of collective bargaining. The parties also agree that the employees in the unit are guards within the meaning of the Act. There are approximately 25 employees employed in the unit.

1999, for the purpose of dealing with employers concerning wages, rates of pay, hours and working conditions on behalf of employees it seeks to represent. As of the date of the hearing in this matter, the Petitioner had no collective bargaining agreements with any employers nor had it conducted any membership meetings. The record reveals that the Petitioner intends to allow employees to participate in its future affairs by attending monthly meetings, formulating demands for collective bargaining negotiations and ratifying collective bargaining agreements in the event it becomes the collective bargaining representative of employees it seeks to represent. The sole officer of the Petitioner is its President, Gregg McCarthy. The Petitioner is in the process of establishing a bank account. The record reveals that the Petitioner has promulgated a set of by-laws for its governance that provides in Article II that it will limit its representation and organizing activities to statutory guard employees. In addition, the by-laws provide, *inter alia*, that officers of the Petitioner shall be elected, that the Petitioner will hold regular meetings and that employees will be allowed to participate in its governance. I have also taken administrative notice that the showing of interest submitted by the Petitioner in support of the instant petition are applications for membership which authorize the Petitioner to represent employees and negotiate on their behalf.

With regard to labor organization status, there are essentially only two requirements for a party to meet to achieve the status of a labor organization as defined by Section 2(5) of the Act: first, it must be an organization in which employees participate; and second, it must exist for the purpose, in whole or in part, of dealing with employers concerning wages, hours, and other terms and conditions of employment. *Alto Plastics Manufacturing Corp.*, 136 NLRB 850 (1962). Contrary to

the Employer's contention that the evidence does not support a finding that the Petitioner meets the definition of a labor organization as an "organization ...in which employees participate" as required by Section 2(5) of the Act (noting the present tense of the statutory language), I find that the Petitioner has satisfied the definitional requirements. In this connection, noting that the Petitioner has submitted a requisite showing of interest where employees have designated it to represent them in collective bargaining, that based thereon it has filed the instant petition and that it has promulgated a set of by-laws for its governance which provides for employees' participation in its affairs, I find that the Petitioner is an organization in which employees participate within the meaning of Section 2(5) of the Act. *Grand Lodge International Association of Machinists*, 159 NLRB 137 (1966); *Pittsburgh Limestone Corporation*, 77 NLRB 710 (1948).⁶

There is no evidence to support the Employer's mere assertion at the hearing that the Petitioner received assistance in its formation from other unspecified labor organizations.⁷ In this regard, assuming *arguendo* that it had received such aid, the Board has held that "assistance furnished a guards' union during its infancy by a union admitting to membership employees other than guards does not necessarily establish affiliation between the unions." *Wells Fargo Guard Services*, 236 NLRB 1196 (1978). Further, there is no evidence that the Petitioner is either directly or indirectly affiliated with any other labor organization. Cf. *Stewart-Warner Corp.*, 273 NLRB 1736 (1985). In this connection, Section 9(b)(3) of the Act provides that the

⁶ The Employer's reliance on *Long Beach Youth Home*, 230 NLRB 648 (1977) is misplaced as the issue here is not whether employees who act concertedly constitute a labor organization, but whether the entity which seeks to represent employees itself constitutes a labor organization under the Act.

Board shall not certify a labor organization “as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.” The Petitioner contends that it is not affiliated either directly or indirectly with any other organization nor is there any evidence that it is so affiliated.

Based upon the above, and the record as a whole, I find the Petitioner to be a labor organizations under Section 2(5) of the Act. *Ana Colon, Inc.* 266 NLRB 611, 612 (1983); *Alto Plastics Manufacturing Corp.*, *supra*.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced

⁷ This assertion is not repeated in the Employer's post-hearing brief.

more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **Local 225, United Security Guards of America**.

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in NLRB Region 22, 20 Washington Place, 5th Floor, Newark, New Jersey 07102, on or before October 29, 1999. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington,

DC 20570-0001. This request must be received by the Board in Washington by November 5, 1999.

Signed at Newark, New Jersey this 22nd day of October 1999.

/s/Gary T. Kendellen

Gary T. Kendellen, Regional Director
NLRB Region 22
20 Washington Place, 5th Floor
Newark, New Jersey 07102

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